IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.741 OF 2005

IN

SUMMARY SUIT NO.2938 OF 2004

Kaluchand H. Bokadia. ...Plaintiff

vs.

1. Mahenira Bhoite & another. ...Defendants.

Mr.H.V.Chande, for Plaintiff.

Mr.C.N.Chavan, for Defendant no.1.

Mr.L.C.Wadhawani, for Defendant no.2.

CORAM: D.K.DESHMUKH,J.

DATED: 13th June, 2006.

P.C.:-

1. The plaintiff has taken out this summons for judgment against both the defendants. According to the plaintiff, the defendant no.2 had placed an order with the plaintiff for supply of goods. According to that order the goods were to be supplied to the defendant no.1. Accordingly, under the invoice at

“Exhibit A” the plaintiff had dispatched the goods through a transport company to defendant no.1. The defendant no.1 had received the goods and signed the transport receipt which is annexed to the plaint at Exhibit B. The defendant no.2 has been served with the summons for judgment. The affidavit of service has been filed. He has chosen not to file any application for leave to defend the suit. Therefore, in the absence of any application for leave to defend the suit filed by the defendant no.2, the plaintiff is entitled to a decree against the defendant no.2.

2. So far as the defendant no.1 is concerned, he has filed the reply. The defence of the defendant no.1 is that he did not purchase the goods from the plaintiff. According to him, he purchased the goods from defendant no.2, and that after receiving the goods, he made payment of the price of the goods to defendant no.2. The defence put up by the defendant no.1 cannot be accepted in the face of the admitted documents on record. The document at Exhibit A clearly shows that the goods were purchased by the defendant no.1 and that they were dispatched through

Sunder Transport Company. The document at Exhibit B which admittedly was signed by the defendant no.1 shows that the defendant no.1 has received the goods from the plaintiff. In the face of these documents which clearly show that the goods were sent by the plaintiff to the defendant no.1, the defence of the defendant no.1 that he had received the goods from defendant no.2 cannot be accepted. If according to the defendant no.1 he had placed the order for the goods with defendant no.2, the defendant no.1 would not have accepted the goods which were delivered to him under the receipt at Exhibit B because the receipt at "Exhibit B" clearly shows that the supplier of the goods was the plaintiff and not the defendant no.2. After having receiving the goods under the Receipt at Exhibit B, the defendant no.2 could not have made payment as claimed by him to defendant no.2. After having receiving the goods under the document at Exhibit B the only person entitled to payment of the price of the goods was the supplier thereof viz. the plaintiff. Thus, the defence put up by the defendant no.1 is contrary to the documents on record and therefore, incapable of

being accepted, and therefore, the defendant no.1 is also not entitled to leave to defend the suit. As both the defendants are not entitled to leave to defend the suit, the plaintiff is entitled to a decree. The summons for judgment is therefore, granted. The suit is decreed in terms of prayer clause of the suit. Refund of court fees as per rules.